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An Act To Authorize Peaks Island, House Island, Pumpkin Knob and Catnip Island To Secede from the City of Portland

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. Separation of Peaks Island, House Island, Pumpkin Knob and Catnip Island and incorporation as Town of Peaks Island. Subject to a referendum election held in accordance with section 2 of this Part, the following territory now within the City of Portland and Cumberland County, together with the inhabitants of that territory, is separated and set off from the City of Portland and incorporated into a separate town by the name of the Town of Peaks Island: Peaks Island, House Island, Pumpkin Knob, Catnip Island and the surrounding waters, referred to in this Act as "the Peaks Island territory." By virtue of this separation, the Town of Peaks Island is also removed from the jurisdiction of the Board of Harbor Commissioners of the Port of Portland but remains within Cumberland County.

The boundaries of the Town of Peaks Island are described as follows: All that part of the City of Portland in Cumberland County in the State of Maine beginning from sea NNW along the Long Island line to a point in the waters of Hussey Sound between Long Island, Peaks Island and Great Diamond Island starting at 43° 40' 47.1" N by 70° 10' 56.29" W, extending SW to 43° 40' 35.93" N by 70° 11' 12.04" W, continuing to 43° 40' 0.13" N by 70° 12' 5.78" W, continuing SW to 43° 39' 34.86" N by 70° 12' 34.34" W, then SW to 43° 39' 3.69" N by 70° 12' 59.96" W, then SE to 43° 38' 54" N by 70° 12' 47.73" W, then E to 43° 38' 56.37" N by 70° 11' 34.73" W, then E to 43° 38' 57" N by 70° 11' 8.64" W, then SSE to sea along a line parallel to the Long Island line.

Sec. A-2. Referendum election. This Part takes effect no sooner than 30 days after completion of agreement or arbitration of debts and assets between the Peaks Island territory and the City of Portland in Part B to permit its submission to the voters of the Peaks Island territory at a special referendum election to be held on January 10, 2012. Warrants must be issued for this election notifying the qualified voters to vote on the approval or rejection of this Part.

For the purposes of this referendum election, all persons resident and legally registered to vote within the Peaks Island territory are eligible to vote on the question with respect to the separation of the Peaks Island territory from the City of Portland.

The city clerk of the City of Portland shall prepare the required ballots on which the subject matter of this Act must be reduced to the following question:

"Do you favor the separation of Peaks Island, House Island, Pumpkin Knob and Catnip Island and the surrounding waters from the City of Portland and their incorporation as a separate town?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their vote on this question.

The referendum election must be conducted by the city clerk of the City of Portland, who shall declare the result of the election. After the polls close and after a ballot inspection and recount, if one is necessary, the city clerk's declaration of the election results is final, subject to review by the Superior Court for the County of Cumberland. The city clerk shall file the results of the referendum election with the Secretary of State. The Peaks Island territory shall reimburse the City of Portland for the reasonable and necessary administrative costs the City of Portland incurs in conducting this referendum election.

Sec. A-3. Effective date of separation. If a majority of those voting in the referendum under section 2 of this Part approve the question, this Part takes effect with respect to the Peaks Island territory and the Peaks Island territory is separated from the City of Portland and is incorporated as the Town of Peaks Island on July 1, 2012.

Sec. A-4. Provision for first meeting. If a majority of those voting in the referendum under section 2 of this Part approve the question, within 30 days after the election a justice of the peace or notary public may issue a warrant to any legal voter in the Peaks Island territory directing that legal voter to notify the municipal inhabitants within the Peaks Island territory of a public meeting to select 9 transition representatives by written ballot. Notice to the municipal inhabitants must be provided at least 7 days prior to the meeting.

Effective immediately after the election, the transition representatives selected at the meeting are vested with the powers to represent the future Town of Peaks Island and to enter into letters of intent and memoranda of understanding for the establishment of its local government, to negotiate interlocal agreements and to engage in other necessary transition activities.

Any agreements made by the transition representatives must be presented for ratification by the Town of Peaks Island's legislative body after the incorporation of the Town of Peaks Island. The term of the transition committee members expires July 31, 2012.

Within 30 days prior to July 1, 2012, a justice of the peace or notary public may issue a warrant to any legal voter in the Town of Peaks Island directing that legal voter to notify the municipal inhabitants of a public meeting to select municipal officers and school board members and to transact municipal business, to be held at a time and place specified in the warrant. Notice to the municipal inhabitants must be provided at least 7 days prior to the meeting. Effective July 1, 2012, municipal officers and school board members selected at the meeting are vested with all the powers and duties that other duly elected municipal officers and school board members have, including the power to raise, borrow and spend money.

Sec. A-5. Form of government. If a majority of those voting in the referendum under section 2 of this Part approve the question, the Town of Peaks Island will be incorporated and separated from the City of Portland on July 1, 2012 and shall adopt the town meeting as its form of government.

This Act does not prevent the Town of Peaks Island from subsequently voting to change its form of government without the necessity of a further act of the Legislature.

Sec. A-6. Allocation of debts and assets. If the Town of Peaks Island is incorporated and is separated from the City of Portland on July 1, 2012, the Town of Peaks Island shall assume its just and due proportion of the debts of the City of Portland and must receive the same proportion of the assets of the City of Portland, including property taxes collected from July 1, 2011 to June 30, 2012. Any debt or any asset may be excluded upon agreement of both parties.

Sec. A-7. Sewage treatment services. If the Peaks Island territory is separated from the City of Portland and is incorporated as the Town of Peaks Island, the Portland Water District shall provide wastewater and sewage services to the Town of Peaks Island in accordance with the district's charter. The allocation of financing, operating and maintenance costs and any other costs related to wastewater and sewage collection, interception and treatment under this section must be consistent with the Portland Water District charter, except that, if agreement is not reached between the Town of Peaks Island and the City of Portland, the arbitration panel established pursuant to Part B, section 2 may allocate or reallocate between the City of Portland and the Town of Peaks Island any of the financing, operating and maintenance costs and any other costs related to wastewater and sewage collection in its total allocation of debts and assets.

If the Town of Peaks Island fails to make necessary payments on any bonded indebtedness and interest for the wastewater and sewage collection facilities on Peaks Island allocated to the Town of Peaks Island pursuant to section 6 of this Part, the City of Portland shall pay the principal and interest on any bonds issued by the Portland Water District prior to July 1, 2012. If the City of Portland makes such payments, the Town of Peaks Island shall reimburse the City of Portland those payments and the City of Portland has a cause of action against the Town of Peaks Island for any unpaid amount of those payments.

Sec. A-8. Water rates. If the Town of Peaks Island is incorporated and is separated from the City of Portland, the Portland Water District shall provide water service to the Town of Peaks Island in accordance with the district's charter and may charge rates in accordance with the provisions of the Maine Revised Statutes, Title 35-A, chapter 61.

PART B

Sec. B-1. Other duties and responsibilities. Projected debts, assets and property taxes for the period June 30, 2011 to July 1, 2012 must be allocated between the City of Portland and the Town of Peaks Island as set forth in Part A, section 6. The City of Portland and the Town of Peaks Island shall allocate other duties and responsibilities between themselves as they mutually determine to be necessary and appropriate and shall negotiate with each other in good faith.

Sec. B-2. Agreement binding; binding arbitration. Negotiations under section 1 of this Part must be completed by November 1, 2011. This deadline may be extended by mutual agreement of the City of Portland and the Town of Peaks Island. If the parties reach agreement by the date agreed upon by the parties, the agreement must be reduced to writing and is final and binding on the City of Portland and the Town of Peaks Island upon incorporation of the Town of Peaks Island on July 1, 2012, if the referendum question in Part A, section 2 is approved.

If the parties do not reach agreement by November 1, 2011, the parties shall submit any matters remaining in dispute to a panel of arbitrators and shall reduce to writing all matters agreed upon. The panel of arbitrators consists of one arbitrator selected by the City of Portland, one arbitrator selected by the representatives of the Island Independence Committee and one neutral arbitrator selected jointly by the other 2 arbitrators. Each party shall pay the cost of the arbitrator it chooses; the costs of the neutral arbitrator must be apportioned and paid equally by the City of Portland and the Peaks Island territory. Determination of disputed matters by the panel of arbitrators is final and binding on the parties. The arbitration must be administered under the auspices of the American Arbitration Association and, except for the selection of arbitrators, is governed by the commercial rules and procedures of the American Arbitration Association. The concept of "last best offer" must be used. These issues must be resolved no later than December 1, 2011.

Sec. B-3. Educational needs. Upon the date of its secession from the City of Portland and incorporation as the Town of Peaks Island, the Town of Peaks Island becomes a municipal school unit as defined in the Maine Revised Statutes, Title 20-A, section 1, subsection 19. No further referenda, legislation or dispensations by the State or any of its officers, departments or agencies is required of the Town of Peaks Island prior to its undertaking the education of its school-age children.

The Town of Peaks Island shall start providing education services upon the date of its secession from the City of Portland and incorporation as the Town of Peaks Island as required by Title 20-A, including, but not limited to, matters of curriculum, instruction, transportation, mainland student transition, attendance, student eligibility for enrollment, student records, audits, employee and applicant records, standards and assessment of student performance, health, nutrition and safety, immunization, school lunch programs, special education, school finances, gifted and talented students, career and technical education and adult and vocational education.

The Town of Peaks Island's education plan must provide for the transition of administration and governance of the Peaks Island School to the properly elected Town of Peaks Island school board. This Act may not be construed to prevent the Town of Peaks Island school board from making changes to the provision of education services and the education plan in accordance with the school board's powers and duties pursuant to Title 20-A.

PART C

Sec. C-1. Hold harmless provision and enforcement. The municipal officers, municipal officials and residents of the City of Portland and the Town of Peaks Island and all their agents are immune from liability for any action taken as a result of this Act. The City of Portland and the Town of Peaks Island, or their successors in interest, may enforce this Act by civil action in Superior Court. In any action between the City of Portland and the Town of Peaks Island, the court shall award reasonable attorney's fees to the prevailing party.

Sec. C-2. Equal rights. After the separation and incorporation of the Town of Peaks Island, residents of the Town of Peaks Island and the City of Portland continue to enjoy equal access to municipally owned public lands for travel, recreation and related activities and enjoy all the rights and privileges they enjoyed before the separation, just as residents of other towns and municipalities enjoy.

SUMMARY

This bill authorizes the incorporation of Peaks Island, House Island, Pumpkin Knob and Catnip Island into the Town of Peaks Island if the legal residents of those territories approve, by referendum, separation from the City of Portland and incorporation as a separate town. Part B clarifies the binding arbitration process. Part C specifies the liability and rights of the City of Portland and the Town of Peaks Island.